

Tentative Rulings for October 17, 2018
Departments 403, 501, 502, 503

There are no tentative rulings for the following cases. The hearing will go forward on these matters. If a person is under a court order to appear, he/she must do so. Otherwise, parties should appear unless they have notified the court that they will submit the matter without an appearance. (See California Rules of Court, rule 3.1304(c).)

18CECG02535 *Volvo Financial Services v. Singh, et al.* (Dept. 501)
Hearing: 10/18/2018 @ 3:00 p.m.

The court has continued the following cases. The deadlines for opposition and reply papers will remain the same as for the original hearing date.

18CECG02381 *Duncan v. McCormick, Barstow, Sheppard, Wayte & Carruth, LLP* is continued to Wednesday, October 24, 2018 at 3:30 p.m. in Dept. 503.

18CECG02795 *Versola v. County of Fresno, et al.*, is continued to Thursday, November 8, 2018, at 3:00 p.m., in Dept. 501.

14CECG00195 *Mohammed v. Provident Savings Bank* is continued to Tuesday, November 6, 2018 at 3:30 p.m. in Dept. 502.

18CECG01010 *Colley v. Sierra Meadows Senior Living Center* is continued to Thursday, November 1, 2018 at 3:30 p.m. in Dept. 503.

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 403

2

Tentative Ruling

Re: ***Janet Sterns-Sirman v. Judy Takano***
Superior Court Case No. 17CECG04103

Hearing Date: October 17, 2018 (Dept. 403)

Motion: Compel plaintiff to provide initial verified responses to form interrogatories, set one, special interrogatories, set one and set two and request for production of documents, set one and sanctions

Tentative Ruling:

To grant defendant Judy Takano's motions to compel plaintiff Janet Sterns-Sirman to provide initial verified responses to form interrogatories, set one, special interrogatories, set one and set two and request for production of documents, set one. (Code of Civil Procedure sections 2030.290(b), 2031.300(b).)

To grant defendant Judy Takano's motion for sanctions. (Code of Civil Procedure sections 2030.290(c), 2031.300(c).) Janet Sterns-Sirman and her attorney of record, jointly and severally, are ordered to pay sanctions in the amount of \$592.50 to Hartsuyker, Stratman & Williams-Abrego-Fresno within 30 days of service of this order. (Code of Civil Procedure sections 2030.290(c), 2031.300(c).)

Pursuant to California Rules of Court, rule 3.1312 and Code of Civil Procedure section 1019.5(a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling

Issued By: RTM on 10/15/18
(Judge's initials) (Date)

(2)

Tentative Ruling

Re: ***In re Bryan Feil***
Superior Court Case No. 18CECG03104

Hearing Date: October 17, 2018 (Dept. 403)

Motion: Petition to Compromise Minor's Claim

Tentative Ruling:

To grant. Order signed. Hearing off calendar.

Pursuant to California Rules of Court, rule 3.1312 and Code of Civil Procedure section 1019.5(a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling

Issued By: RTM on 10/15/18
(Judge's initials) (Date)

(17)

Tentative Ruling

Re: ***Samrai v. Samrai, et al.***
Court Case No. 16CECG02452

Hearing Date: October 17, 2018 (Dept. 403)

Motion: Defendant Samrahi's Motion to Tax Costs

Tentative Ruling:

To deny.

Explanation:

Items of allowable costs are set forth in Code of Civil Procedure section 1033.5, subdivision (a), and disallowed costs are set forth in subdivision (b). Items not expressly mentioned in the statute "upon application may be allowed or denied in the court's discretion." (Code Civ. Proc. § 1033.5, subd. (c)(4).) All allowable costs must be reasonably necessary to the conduct of the litigation rather than merely convenient or beneficial to its preparation, and they must be reasonable in amount and actually incurred. (Code Civ. Proc. § 1033.5, subd. (c)(1), (2) and (3).)

On motion to tax costs, the initial burden depends on the nature of the costs that are being challenged. "[T]he mere filing of a motion to tax costs *may* be a "proper objection" to an item, the necessity of which appears doubtful, or which does not appear to be proper on its face. However, if the items appear to be proper charges, the verified memorandum is *prima facie* evidence that the costs, expenses and services therein listed were necessarily incurred by the defendant, and the burden of showing that an item is not properly chargeable is upon the objecting party." (*Nelson v. Anderson* (1999) 72 Cal.App.4th 111, 131.)

In order to meet this burden, where the objections are based on factual matters, the motion should be supported by a declaration. (*County of Kern v. Ginn* (1983) 146 Cal.App.3d 1107, 1113-1114.)

Item 16 – "Other"

Defendant requests that the following fees claimed in the "Other" category be taxed:

1. Complex / Subpoenaed records from Expedited Freight Systems \$82.00
2. Complex / Subpoenaed records from Wex Fleet One \$84.25
3. Complex / Subpoenaed records from Fleet-Tech Transportation Services \$68.50
4. Complex / Subpoenaed records from Wells Fargo Bank, N.A. \$86.20
5. Complex / Subpoenaed records from JP Morgan Chase Bank N.A. \$83.50

6. Complex / Subpoenaed records from Wells Fargo Bank National Association \$101.20
7. Complex / Subpoenaed records from Ranu M.S. \$125.75
8. Bank of America / Subpoenaed records from Bank of America \$93.78
9. Courtcall / Fresno County Superior Court hearing \$116.00
10. Fresno County Recorder's Office - Notice of Pendency of Action \$40.10
11. Fresno County Recorder's Office - Release of Notice of Pendency of Action \$81.20

Subpoena Records

Defendant moves to tax all the costs incurred in subpoenaing records -- \$725.18. However, The cost of subpoenaing records is recoverable as part of the taking of necessary depositions under section 1033.5, subdivision (a)(3). Records only subpoenas accomplish the same thing as subpoenas seeking the appearance of the custodian of records at less expense. The court will allow the cost of "records only" subpoenas.

CourtCall Appearance

Code of Civil Procedure section 1033.5(b)(3) provides: "The following items are not allowable as costs, except when expressly authorized by law... Postage, telephone, and photocopying charges, except for exhibits." Defendants assert the undated CourtCall appearance is a telephone fee and ask that it be taxed.

This fee is incurred by plaintiff to CourtCall, LLC, the private provider of telephonic court appearances. The CourtCall charges are not disallowed telephonic expenses prohibited by Code of Civil Procedure section 1033.5, subdivision (b)(3). This subdivision excludes "telephone ... charges," but the fee paid to CourtCall LLC is not a fee for the use of a telephone. Section 1033.5 does not expressly prohibit CourtCall appearance fees, and thus this court has discretion to award them. (Code Civ. Proc., § 1033.5, subd. (c)(4).) The \$116.00 charge represents hours of attorney time not spent driving to the Court, looking for parking, and waiting for the case to be called on relatively minor matters. Currently, CourtCall appearances are reasonably necessary to conduct litigation. Accordingly, the court will not tax the one \$116.00 CourtCall cost as unjustified.

Recording Costs

Recorder's fees are neither expressly allowed nor disallowed under CCP § 1033.5. As stated in Code of Civil Procedure §1033.5(c)(4) "items that are not mentioned...may be allowed or denied in the court's discretion." The gravamen of this action was specific performance of a contract to reconvey title. The claim necessarily affected title to the property. It was not improper to file a lis pendens. Notice of the filing of the lis pendens was properly filed in this action on August 9, 2016. Likewise, at the conclusion of the litigation it was proper to withdraw the lis pendens. Accordingly, the court will not tax the recorder's fees.

Pursuant to California Rules of Court, rule 3.1312(a) and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order

adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling

Issued By: RTM **on** 10/15/18
(Judge's initials) (Date)

(17)

Tentative Ruling

Re: ***In re: 1550 Kamm Avenue, #101, Kingsburg, CA 93631***
Court Case No. 18CECG01653

Hearing Date: October 17, 2018 (Dept. 403)

Motion: Randalyn Creek's Claim for Surplus Proceeds from Trustee's Sale of Property

Tentative Ruling:

To grant in the amount of \$3,589.55.

Explanation:

Surplus proceeds of a non-judicial foreclosure sale must be distributed pursuant to Civil Code section 2924k, subdivision (a):

The trustee, or the clerk of the court upon order to the clerk pursuant to subdivision (d) of Section 2924j, shall distribute the proceeds, or a portion of the proceeds, as the case may be, of the trustee's sale conducted pursuant to Section 2924h in the following order of priority:

- (1) To the costs and expenses of exercising the power of sale and of sale, including the payment of the trustee's fees and attorney's fees permitted pursuant to subdivision (b) of Section 2924d and subdivision (b) of this section.
- (2) To the payment of the obligations secured by the deed of trust or mortgage which is the subject of the trustee's sale.
- (3) To satisfy the outstanding balance of obligations secured by any junior liens or encumbrances in the order of their priority.
- (4) To the trustor or the trustor's successor in interest. In the event the property is sold or transferred to another, to the vested owner of record at the time of the trustee's sale.

It is clear that Randalyn is a junior lienholder, but in what amount – the lien face amount of \$3,589.55 or the current amount due of \$9,413.42 including collection costs?

Regular and special assessments on common interest developments are delinquent 15 days after they become due. (Civ. Code, § 5650, subd. (b).) When an assessment is delinquent the association may recover from the delinquent member: (1) reasonable costs, including attorney's fees, incurred in collecting the delinquent assessment; (2) a late charge not exceeding 10 percent of the delinquent assessment, or 10 dollars, whichever is greater, or a lesser late charge as provided in the Declaration; and (3) interest on the assessments, costs, and late charges at the rate of

12 percent per annum commencing 30 days after the assessment becomes due. (*ibid.*) The obligation to pay assessments is the personal liability of the owner of the subdivision interest at the time the assessment is levied. (Civ. Code, § 5650, subd. (a).)

The obligation of the owner of a subdivision interest to pay assessments in any common interest development can be secured by a lien on the owner's interest that can be foreclosed if the assessments are not paid. (Civ. Code, § 5660.) The lien is imposed on the property and has priority from and after the date the association records a notice of delinquent assessment as provided in the statute. (Civ. Code, § 5675, subd. (a).) Section 5675, subdivision (a) states "The amount of the assessment, plus any costs of collection, late charges, and interest assessed in accordance with subdivision (b) of Section 5650, *shall be a lien* on the owner's separate interest in the common interest development from and after the time the association causes to be recorded with the county recorder of the county in which the separate interest is located, a notice of delinquent assessment, *which shall state the amount of the assessment and other sums imposed in accordance with subdivision (b) of Section 5650 ...*" The plain language of section 5675 does not grant a continuing lien for future amounts that may come due. (Compare Bus. & Prof. Code, § 21702 ["The owner of a self-service storage facility ... [has] a lien upon all personal property located at a self-service storage facility for rent, labor, late payment fees, or other charges, *present or future*, incurred pursuant to the rental agreement ..."] (emphasis added).])

Pursuant to California Rules of Court, rule 3.1312(a) and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling

Issued By: RTM on 10/16/18
(Judge's initials) (Date)

(28)

Tentative Ruling

Re: ***Janes v. Union Pacific Railroad Co.***
Case No. 17CECG01853
Hearing Date: October 17, 2018 (Dept. 403)
Motion: By Plaintiff for Admission of Joseph J. Cappelli to Appear as Counsel
Pro Hac Vice

Tentative Ruling:

To grant the application.

Explanation:

Plaintiff Marie A. Janes has filed an application for the admission of Joseph J. Cappelli *pro hac vice* in the above-entitled case.

Plaintiff has complied with the requirements of California Rule of Court 9.40, applicable to applications for appearance of counsel *pro hac vice*, and no opposition or objection has been filed with this Court. Therefore, the application is granted.

Pursuant to California Rules of Court, rule 3.1312, subdivision (a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling

Issued By: RTM on 10/15/18
(Judge's initials) (Date)

Tentative Rulings for Department 501

Tentative Rulings for Department 502

(2)

Tentative Ruling

Re: ***In re Christian Quintero***
Superior Court Case No. 18CECG03307

Hearing Date: October 17, 2018 (Dept. 502)

Motion: Petition to Compromise Minor's Claim

Tentative Ruling:

To deny without prejudice. Petitioner must file an amended petition, with appropriate supporting papers and proposed orders, and obtain a new hearing date for consideration of the amended petition. (Super. Ct. Fresno County, Local Rules, rule 2.8.4.)

Explanation:

The petitioner seeks reimbursement of medical expenses, however there is no proof of expenses incurred and payments made as required. See petition item 15 in italics.

The customary reasonable attorney's fees in a petition to compromise the minor's claim are 25% of the net settlement. In the current petition the attorney seeks 25% of gross.

The petition indicates that the money will be deposited in an insured account. Information about the institution is required to be set out in Attachment 19b(2). There is no such attachment to the petition.

Pursuant to California Rules of Court, rule 3.1312 and Code of Civil Procedure section 1019.5(a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling

Issued By: DSB on 10/16/18
(Judge's initials) (Date)

(20)

Tentative Ruling

Re: ***City of Fresno v. State Center Community College District et al.***

Superior Court Case No. 16CECG01307

Hearing Date: October 17, 2018 (Dept. 502)

Motion: Plaintiff's Motion to Compel Further Discovery Responses

Tentative Ruling:

To grant as to Request for Admission nos. 5 and 6, and to Form Interrogatory no. 17.1. Within 10 days of service of the order by the clerk, defendant State Center Community College District shall serve further responses to Request for Admission nos. 5 and 6 in conformance with this order. To deny the request for sanctions.

Explanation:

Requests for Admission:

Each answer "shall be as complete and straightforward as the information reasonably available to the responding party permits." (Code Civ. Proc. § 2033.220(a).) Thus, absent an objection, the response must contain one of the following:

- An admission;
- A denial;
- A statement claiming inability to admit or deny.

(Code Civ. Proc. § 2033.220(b).) The answer must be "as complete and straightforward" as the information available *reasonably permits* and must "*(a)dmitt so much of the matter involved in the request as is true ... or as reasonably and clearly qualified by the responding party.*" (Code Civ. Proc. § 2033.220(a), (b)(1), emphasis added.)

In a motion to compel further responses, the responding party has the burden of substantiating any objections to the discovery. (*D.L. Chadbourne, Inc. v. Superior Court* (1964) 60 Cal.2d 723, 729.)

In response to RFA no. 5, after asserting various objections, defendant responds, "Without waiving its objections, defendant responds as follows: Admit that Richard Lindstrom made that representation in his May 19, 2015 email. However, it pertained to a subsequent remedial or precautionary measure."

The motion is granted as to RFA no. 5 because it is unclear whether the response is an unqualified admission. It sounds like an admission, but defendant also provided a form interrogatory no. 17.1 response explaining the response to the request for admission – a 17.1 response is only called for if there was not an unqualified admission. The response seems to incorporate argument in explaining that it pertained to a subsequent remedial or precautionary measure, which really isn't pertinent to whether

Mr. Lindstrom made the referenced finding. Defendant must provide a clearer admission, denial, or qualified admission.

Defendant only attempts to substantiate two of the objections asserted in the response – Evidence Code § 1151, and that the request is not full and complete in and of itself.

Evidence Code § 1151 provides,

When, after the occurrence of an event, remedial or precautionary measures are taken, which, if taken previously, would have tended to make the event less likely to occur, evidence of such subsequent measures is inadmissible to prove negligence or culpable conduct in connection with the event.

As the moving papers point out, section 1151 concerns admissibility of evidence, not discoverability. It does not limit the scope of discovery. (*Bank of the Orient v. Superior Court* (1977) 67 Cal.App.3d 588.) But in this context the court sees no problem with raising the objection at this stage in order to preserve it, so long as a substantive response is provided.

Code of Civil Procedure § 2033.060(d) requires that each request for admission shall be full and complete in and of itself. Defendant raises contends that because the request references Mr. Lindstrom's May 19, 2015 email, the request is not full and complete in itself.

That reference is not a problem in the context of this request. While it does reference another document, the substance of the statement in that document is described in the request for admission. The RFA itself contains all of the information necessary to respond.

Accordingly, in defendant's further response, all objections other than that based on Evidence Code § 1151 shall be removed.

Plaintiff only takes issue with the objections raised to RFA no. 6. Defendant only attempts to substantiate two objections.

First is the objection that the request is vague and ambiguous. Defendant explains that the RFA references the rangemasters' conduct on May 19, 2015. But the incident occurred on April 20, 2015. May 19, 2015 is not relevant to the litigation.

Be that as it may, that doesn't render the RFA vague and ambiguous. If the reference to May 19, 2015 is a drafting mistake, any response to it will simply be of no use to plaintiff.

There is no merit to the objection that the request is not full and complete in itself.

Therefore, defendant shall to provide a further response omitting all objections, and simply denying the RFA.

Form Interrogatories:

Plaintiff moves to compel further responses to Form Interrogatory no. 17.1 with regards to RFA nos. 5 and 6.

As to RFA no. 5, explaining why a further response should be compelled, plaintiff merely states, "If Request for Admission No. 5 was an admission, there should be no response to Form interrogatory 17.1. If it is a qualified admission, what is being qualified should be delineated and clear." However, it is unclear what plaintiff expects here. Plaintiff does not explain how the factual response to RFA no. 5 is inadequate. It does not appear to be inadequate to the court.

As for RFA no. 6, if the referenced date of May 19, 2015 is irrelevant to this action, it is unclear what further response would be warranted.

The motion is denied as to Form Interrogatory no. 17.1.

Pursuant to Cal. Rules of Court, Rule 3.1312(a) and Code Civ. Proc. § 1019.5(a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling

Issued By: DSB **on** 10/16/18
(Judge's initials) (Date)

(30)

Tentative Ruling

Re: **Velma White v. Judy Park**
Superior Court Case No. 18CECG01188

Hearing Date: October 17, 2018 (Dept. 502)

Motion: Defendants Judy Park and Gloria Blajos' motion to dismiss for failure to amend

Tentative Ruling:

To deny Defendants Judy Park and Gloria Blajos' motion to dismiss for failure to amend.

Plaintiffs are granted 10 days' leave to file a first amended Complaint. The time in which the complaint can be amended will run from service by the clerk of the minute order.

Explanation:

The Court may dismiss the Complaint when, after a motion to strike the whole of a Complaint or a portion thereof is granted with leave to amend, the plaintiff fails to amend it within the time allowed by the Court and either party moves for dismissal. (Code Civ. Proc., § 581, subd. (f)(4).)

However, as used in Code of Civil Procedure section 581, subdivision (f), the word "may" has been interpreted as allowing the trial court discretion to grant or deny the motion to dismiss. ([Harlan v. Department of Transp. \(2005\) 132 Cal.App.4th 868](#), 874.) In *Harlan*, the Court held that after sustaining a demurrer, the trial court has discretion to accept a Plaintiff's amended Complaint, filed several days after deadline, even though Plaintiff never requested an extension of time, as long as the late filing does not affect the parties' substantial rights.

Similarly, in *Contreras v. Blue Cross of Cal.* (1988) 199 Cal.App.3d 945, 947-948, the Court held that a judge has discretion to deny a defendant's motion to dismiss pursuant to Code of Civil Procedure section 581, where the Plaintiff has failed to amend after a demurrer has been sustained. *Contreras* also held that it is permissible to allow a Plaintiff to file an amended Complaint when the Plaintiff shows good cause for failing to file the amended Complaint within the time limitations.

Here, it is undisputed that Plaintiffs have failed to amend within the time allotted. However, good cause is shown to justify the exercise of discretion to deny this motion and to allow Plaintiffs to file an amended Complaint. First, Plaintiffs claim to have never received notice of Defendants' demurrer or motion to strike. Plaintiff Parrilla states that when Defendants' demurrer and motion to strike were served, he and Plaintiff White were not living at the address where service was effected (e.g., 712 W. Bullard Apt. A

Fresno, CA 93704). This statement is supported by the fact that no meet and confer occurred and no opposition was filed to these motions.

Next, Plaintiff Parrilla states that he never received notice of the hearing wherein Plaintiffs were granted twenty days' leave to amend. This statement is supported by the fact that the minute order advising Plaintiffs that they had twenty days' leave to amend was sent to the same address where service of the motions had been effected. The veracity of Plaintiff Parrilla's statements is supported by the fact that Plaintiff White filed a notice of change of address with this Court less than two weeks after the minute order was mailed out.

Although Plaintiffs failed to timely file and serve a Notice of Change of Address, as they should have done, in view of the lack of any prejudice demonstrated by Defendants, the court prefers to exercise its discretion in favor of resolving the case on the merits rather than dismissing it on a procedural ground.

Pursuant to California Rules of Court, rule 3.1312 and Code of Civil Procedure section 1019.5(a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling

Issued By: DSB on 10/16/18
(Judge's initials) (Date)

Tentative Rulings for Department 503